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CONFLICT OF INTEREST COMMISSIONER

The Honourable H.A.D. OLIVER, Q.C.

ANNUAL REPORT

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BRITISH COLUMBIA

November 30, 2001

Honourable Claude Richmond
Speaker of the Legislative Assembly
of British Columbia
Room 207, Parliament Buildings
Victoria, British Columbia
V8V 1X4

Mr. Speaker:

I have the honour, pursuant to section 15 of the *Members' Conflict of Interest Act* (RS Chapter 287), to present my Annual Report for the period January 1, 2000 to December 31, 2000.

Yours sincerely,

H. A. D. Oliver
Commissioner

Office of the Conflict of Interest Commissioner

The Honourable H. A. D. Oliver, Q.C.
Commissioner

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Annual Report

OF THE CONFLICT OF INTEREST COMMISSIONER

2000

Introduction

This eighth Annual Report of the Commissioner of Conflict of Interest (an independent Officer of the Legislative Assembly) covers the period of January 1, 2000 to December 31, 2000. Past reports have covered periods ending on a variety of different dates. It seems more satisfactory for reports to cover the calendar year.

The first Annual Report was presented in May of 1992. From the Member's Conflict of Interest Commissioner's First Annual Report, I would like to quote my predecessor, the Hon. E. N. (Ted) Hughes, Q.C.

> "Primarily, that ground is the attitude of seventy five members of the thirty-fifth Parliament of British Columbia. Last Tuesday I signed and filed the public disclosure statements with respect to each of the seventy-five Members of the House. In every instance that process was preceded by a private meeting between me and each Member and sometimes with her or his spouse. I detected absolutely no presence of anyone wanting to perform with other than honour and respect, not only pertaining to the requirements of the law relating to conflict of interest but also in adhering to the principles of honesty, integrity, fairness and good faith that I have indicated are the essential ingredients of ethical behaviour, and that are so essential to their return of public confidence in our politicians."

I am pleased to report that the above quotation is, on the whole, still relevant. The sense that I had during the period of this report is that most Members who approached this office, used their integrity and objectivity when examining their actions in public life. The simple act of approaching this office speaks well for the elected official. By and large, have been most co-operative with our office and we both encourage and appreciate this forthright approach.

> The integrity of men is to be measured by their conduct,
> not by their professions. — Junius

Overview

The *Members' Conflict of Interest Act*, section 18 (1), provides:

> "A member may request, by application in writing, that the commissioner give an opinion or recommendation on any matter respecting the obligations of the member under this Act or under section 25 of the *Constitution Act*."

The Conflict of Interest Commissioner provides advice and counsel to Members of the Legislative Assembly of British Columbia — both in written and verbal form — in response to requests for opinions and advice and then offers recommendations regarding the Members activities. Rulings and suggestions by the Commissioner have often been made on an informal basis, by telephone or a quick office visit. The Office of the Conflict of Interest Commissioner can often act as a conduit to common sense, however — that having being said — Members are encouraged to request clarification on any concerns that they may have. It is commendable that many Members call simply to confirm their own tentative views as to whether or not any real or perceived conflict of interest may exist in a given situation. Many of these informal conversations are not documented unless the Commissioner feels that there may be room for a precedent-setting opinion — or that the issue may rear its head again at a later date.

Consequently, the appended abridged case summaries reflect a very broad spectrum of the types of questions that arrive at the office. The examples are not exhaustive, and are abbreviated due to space limitations and do not represent every type of issue that may arise in a Member's day to day activities. The summaries are intended to bring awareness to both Members and their staff and bring to their attention potential exigent issues with the expectation that this office will be contacted for counsel and direction. It should be remembered that each inquiry has it own specific factual situation and that each opinion is based on that set of facts.

Outreach and Public Education

The mandate of the Office of the Conflict of Interest Commissioner is to advise, investigate, educate and to administer a principled system of purpose for all Members of the Legislative Assembly. The establishment of the Office in 1990 paved the way to achieving the goal of improving and maintaining public confidence in our system of government. To that end, over the next year we will be attempting to improve our outreach by the development of a web site for the Conflict of Interest Office. We undertake this exercise (which one may argue is long overdue) in order to provide enhanced mechanisms to assist in the education not only of Members of the Legislative Assembly, but also of the electorate.

Steps are also being undertaken to produce the publication of a "handbook" for all Members of the Legislative Assembly, as well as other interested parties to provide rudimentary guidelines on the more common issues that arise.

These outreach activities will offer both the electorate and Members of the Legislative Assembly tangible tools with which to make informed choices. They are not however a substitute for the very "open door" policy embraced by the Office of the Conflict of Interest Commissioner for Members as well as the public at large, who are encouraged to contact the office — even if the question or issue seems trivial.

The Commissioner continues to give talks to and conduct seminars for a variety of organizations, including university schools of governance and public administration, faculties of law and political science, service clubs, high schools and citizens groups interested in the functional duties of the Office of the Conflict of Interest Commissioner.

Office Operations

The Office of the Conflict of Interest Commissioner is located at 431 Menzies Street in Victoria and the daily operations of the office are managed proficiently by Jill Robinson and Daphne Thompson who job share one full time position as Administrative Records and Information Officers. Due to this job share, the Office remains open daily for Members (and other) inquiries.

The accommodation we occupy is functional and simple by design and has proved to serve the Members well by its location. The office did acquire some new office furnishings over the year to replace the previously "cadged" desks that had seen better days.

The office continues to be operated as modestly and as economically as ever. With the minimum of staff in the office, the retaining of professional services sometimes becomes necessary. This may occur while preparing confidential opinions for Members when complications in the fact pattern make that route advisable. We have no means of adequately estimating our budget requirements for an upcoming year with any confidence due to the nature of the office and any unanticipated issues that may require our attention. Due to the unpredictability of issues during 2000, expenditures over that 12-month period totalled $332,117.73 while our budget for 1999 — 2000 was $313,502.00. It is safe to assume that this may again occur in upcoming years.

Public Perception and The Conduct of Members

The *Member's Conflict of Interest Act*, section 2 (2) states:

> "For the purposes of this act, a member has an apparent conflict of interest if there is a reasonable perception, which *a reasonably well informed person* could properly have, that the member's ability to exercise an official power or perform an official duty or function must have been affected by his or her private interest."

In this new "on-line" society, the public has had more access to information than ever before about contentious topics. Constituents will assess their elected leaders by their responses to these issues — often before the politician has a chance to formulate any opinion on the subject. At times, politicians must make unpopular judgements — it is as simple as that. How they control and communicate those judgements is reflected in the public's scrutiny of the quality of their leadership. It is the honesty and integrity they have used in order to make those judgements that reassures the public and encourages confidence.

On the whole, Members are acutely aware that in the court of public opinion, they are endlessly on trial and use this office as a touchstone to ensure they are walking a path of prudence and following a high standard of moral convention.

To an outsider, optics and perception are everything. A staff member related a story to me about a Committee meeting in the interior of British Columbia. Upon arrival at the airport, a limousine was waiting for the Committee Members to transport them to the meeting. In this particular constituency it was considerably cheaper to rent a limousine for an hour, which was all that was required, rather than hire a rental van for an entire day or order three cabs in order to transport Members from the airport to the meeting. As the eight Members stepped into the limousine, they were met with icy stares from bystanders, who instinctively perceived this action to be "another day at the trough" for elected officials.

> "The concern about (the) appearance of conflict is as important an ethical postulate of modern government as is one that is well founded. The reasons are obvious. Trust and confidence in government can be maintained and enhanced only if the occasions for apparent conflict are kept to a minimum. Public perception is important. Indeed, the perception that government business is being conducted in an impartial and even-handed manner goes a long way to enhancing public confidence in the overall integrity of government."
>
> Honourable W. D. Parker

Political Interest vs. Private Interest

The Conflict of Interest Commissioner has taken the position that furthering "political interests" will rarely be the same as furthering "private interests." In order for a breach of the Conflict of Interest Act to occur, one of these conflicting interests must be a private one. Private interest as defined in the *Member's Conflict of Interest Act* reads as follows:

> "private interest does not include an interest arising from the exercise of an official power or the performance of an official duty or function that:
>
> a) applies to the general public;
>
> b) affects a member as one of a broad class of electors; or
>
> c) concerns the remuneration and benefits of a member or an officer or employee of the Legislative Assembly."

It should be noted that "political interests", owing to the very nature of the duties of an elected representative in a parliamentary democracy, are involved in a wide variety of the Members functions — support for their party's position, formulation of policy, speeches on legislative action taken, visits, travel, or the raising of issues on behalf of certain constituents. I do not consider these to be "private interests", and persons who assert such issues are advised of my position and are provided with a rationalization of the legislation.

Gifts and Personal Benefits

The *Members' Conflict of Interest Act* prohibits accepting a fee, gift or personal benefit that is directly or indirectly connected to the performance of an MLA's duties. Gifts and benefits received as a result of protocol or official duties are exempted from this rule, however, there must be disclosure, as provided for in Form 5 of our regulations, of a gift or benefit worth more than $250.00, or if the total value of gifts from a single source in a year exceeds $250.00.

This is perhaps the most common inquiry that comes into the office and it has been a troubling and perplexing issue for most Members. Gifts or benefits received by Members run the gamut of winning a side of beef at a local rodeo to having the bill for a meal paid for by a dinner companion to the gift of a Tribal Talking Stick or season's tickets to local theatre productions.

Members frequently receive requests to participate in activities as a service to their constituents. A Member should not be expected to buy tickets to everything in his or her riding. However, as many promoters are by and large grateful for the presence of the elected official at their event, it

is appropriate for the Member to accept a complimentary invitation to attend such an event, in the Member's own riding, or elsewhere as the designated representative of the government, or of the Legislative Assembly

Each inquiry is distinct. Having mentioned the public perception issue previously in this report, any proposed gifts or benefits to Members are reviewed as speedily as possible. In most cases, the response is verbal.

The Commissioner

The Commissioner performs three separate but related roles. First, and importantly, he must try to impart constructive and experienced advice before a Member proceeds. I am pleased to report that most Members continue to use my office for this purpose. No matter how sure one is of the right thing to do, it is sometimes useful to have someone else confirm one's own conclusion. When one is not completely certain where the lines are drawn, it can be helpful to discuss it with someone who has no involvement in the issue and this may contribute to a different perspective.

Secondly, each Member is required to meet with the Commissioner at least annually to review the disclosure of the Member's interest and general obligations imposed by the Act.

The third role of the Commissioner is to undertake inquiries into alleged contravention's of the Act. Upon completion of an investigation, the Commissioner reports to the Legislature and, where there is substance to the allegations, may recommend a suitable penalty varying from a reprimand to a fine to suspension to exclusion from the Legislative Assembly.

The Cabinet may also ask the Commissioner for an opinion on any matter related to compliance of the Act as may the Assembly as a whole.

Miscellaneous Inquiries

The office continues to receive a large number of inquires from the general public who are unsure of which way to turn. These are considered "non-jurisdictional" inquiries. "Conflict of Interest" seems to mean many different things to different people. In all cases, the administrative staff employed in the Conflict of Interest Office work diligently to provide the caller or correspondent with resolution. Calls may be referred to various offices including the Ombudsman's Office, various Ministries, Members' Constituency Offices, Caucus Offices and even federal and municipal offices depending

on the issue or may be dealt with in-house. Although this can be a time-consuming task, it proves of great value in educating and informing callers of our particular mandate and in educating the Commissioner on a variety of matters of public concern.

Other Jurisdictions

Federally and provincially, legislatures have adopted a major mandate for administering conflict of interest and ethical conduct rules in Canada and of appointing Commissioners — frequently officers of judicial experience and independent outlooks. Together, these officers meet annually to discuss mutual problems and communicate with each other on a regular basis with the aim of achieving some consistency in legislation and interpretation. The group is called The Canadian Conflict of Interest Network (CCOIN).

The Canadian Conflict of Interest Network (CCOIN) Conference was held September 29th through the 30th of 2000 in St. John's, Newfoundland. These conferences prove to be invaluable to those who attend as it gives the participants a chance to discuss issues that have arisen over the past year and "compare notes". While any decisions made in one jurisdiction are not binding in any other, it is always helpful to hear how particular offices are dealing with similar issues.

The St. John's program included round-table reports from each jurisdiction, as well as a report on Ethics in the New Millennium Conference that was held in Ottawa and hosted by the International Institute for Public Ethics. A report, "Overview of the Council on Governmental Ethics Laws", was delivered by Mr. Robert Clarke, the Ethics Commissioner from Alberta.

The Commissioner maintains contact with a variety of Ethics Offices and Standards of Conduct Commissions in other parts of the world resulting in a mutually advantageous exchange of experiences.

Disclosure Statements

Confidential Disclosure

Within two months of an election and annually after that, every MLA must file with the Conflict of Interest Commissioner, a confidential disclosure statement in the form prescribed by their regulations. The disclosure statement must contain an accounting of the nature of the assets, liabilities and financial interests of the Member, the Member's spouse, minor children and any

private corporations controlled by them. This includes any other information that is established by the regulations.

Once the disclosure statement has been filed with the office, the Member and spouse (if available) meet with the Conflict of Interest Commissioner to obtain advice from the Commissioner on the Member's obligations under the act.

The Member must continue to disclose any material change in the assets, liabilities and financial interest of the Member, the Member's spouse or children.

The Commissioner, after meeting with the MLA, must prepare a public disclosure statement containing all relevant information provided by the Member (and spouse if applicable). The Commissioner must then file the public disclosure statement with the Clerk of the Legislative Assembly.

Public Disclosure

After filing with the Clerk of the Legislative Assembly, the Clerk must then make the statement available to any person for inspection without charge and during normal business hours and provide a copy of the statement on payment of a reasonable copying charge.

Material Change

Each sale or acquisition relating to shares Members may have in any particular corporation, must be disclosed. Each disclosure is regarded as an individual and discrete transaction and each is treated separately in applying the exception provisions of the guidelines. It is the individual value of each transaction, rather than the aggregate value of a series of transactions occurring on the same date, that governs.

A Pending Inquiry

The Honourable Glen Clark, MLA

During the period of this report, the Conflict of Interest Commissioner completed the major portion of its inquiry into the conduct of the former premier relating to a lottery branch application. It had been my plan to conclude this matter before the end of 2000 but it has become obvious that for reasons beyond my control, this cannot now happen. It is my view that the present practice

of allowing both a legislative inquiry and a criminal investigation or prosecution to proceed simultaneously is unsatisfactory. Consideration must be given to a new procedure where one may progress with one, followed if appropriate, by the other to ensure greater fairness to all parties involved, and to save the unnecessary duplication of effort and expenditure of public funds.

Selected Case Summaries

Verbal

Issue 1: A Member has been invited to make use of the private home of a friend over a vacation period at a holiday destination. Section 7 of the act prohibits acceptance of gifts etc. connected directly or indirectly with the performance of his or her duties of office".

Opinion: After review of the circumstances, acceptance of the offer was not objectionable as this benefit was not connected directly or indirectly with the performance in his duties.

Issue 2: A Minister's wife was trading on the stock exchange. Decisions regarding trades were made by a broker.

Opinion: It was suggested that the broker be given written instructions authorising "discretionary trading" with a rider attached, "No BC companies". Changes to her portfolio should be made in accordance with the requirements of the Act.

Issue 3: A Member is a offered a seasons pass to a ski hill in his riding. It was offered in recognition of years of service to the community in different capacities. The Member wished to accept the offer and inquired as to whether this was a conflict.

Opinion: An opinion was rendered that as long as the MLA continued to represent the people of that riding, it would be a conflict to accept such a gift, regardless of the circumstances in which it was offered.

Written

Issue 1: A Member was invited to participate in a study tour of Northern Alberta to review how the province administers regional Government. The host would pay for all travel and transportation costs. The Member would pay for any personal expenses incurred.

Opinion: Travel of this nature is permissible as allowing Members to more efficiently and effectively to carry out the responsibilities of office. The air transportation supplied is not a fee, nor a gift. If it is a benefit at all, it is not a *personal* benefit.

Issue 2: A Member was invited by a personal friend to join him on a trip. The relationship of 10 years is not a political one but a personal one. The flight would be paid for through the use of said friends' air miles.

Opinion: The particulars disclosed indicate nothing that would bring this trip within either the prohibition or the disclosure of provisions of section 7 of the Act.

Issue 3: A private company was interested in a project in the Members riding for the purposes of making a presentation to municipal council. The MLA for that riding attended the meeting. At the conclusion of the meeting, the Member accepted a ride to Victoria aboard the company's private corporate helicopter.

Opinion: The return trip was considered an expense for which the Member would otherwise be reimbursed out of public funds.

Issue 4: A Minister attended an event that highlighted rural telecommunications. One of the communications companies involved in this project asked to give the Minister a gift of a computer valued at approximately $2500.00. The Minister wished to accept this gift and in turn, give it to the local Friendship Centre.

Opinion: This would be acceptable on the understanding that no claim for an income tax deduction would be made.

Issue 5: A Member received a fitness membership in partial compensation for a telephone bill.

Opinion: After reviewing the circumstances of this case, it was decided that the membership did not represent a gift or benefit and need not form the subject matter of gift declaration.

Issue 6: A constituency assistant inquired as to the possibility of another constituency assistant from a neighbouring riding provide advocacy assistance to the Member's constituents as the Member was prevented by earlier rulings of the Conflict of Interest office from offering assistance or by speaking publicly on a specific issue.

Opinion: The Member's reluctance to speak publicly on the issue was entirely proper and in accordance with the letter and spirit of the of the *Members' Conflict of Interest Act*. It was deemed appropriate that the neighbouring Constituency Assistant be used as an alternative advocate.

Issue 7: A Member requested advice with respect to disclosure obligations arising in relation to arrangements that have been made to pay legal fees of counsel retained to conduct court action on behalf of the Official Opposition challenging the Nisga'a Final Agreement on constitutional grounds.

Opinion: The proposed manner of remuneration to the lawyers for their professional services in absence of any personal liability by the Plaintiff MLA, does not constitute a breach of section 7(1) of the act.

Issue 8: Is it appropriate for a Member of Legislative Council, either in the capacity of a Cabinet Minister or an MLA, to write a letter of recommendation either on ministerial or official MLA letterhead? What restrictions exist?

Opinion: After reviewing examples that illustrate the many different problems likely to arise in the question of letters of reference written on Member's Legislative letterhead, it was decided that the letterhead employed by the Member should make clear to the reader the capacity in which the Member supports the nomination. Where support is of a purely personal nature and where it is not intended to convey anything more than personal support on a basis of friendship or a general character reference, a Minister or MLA may properly convey such support using a personal letterhead only.

Issue 9: A Member wished to appeal a decision, on behalf of their child, regarding an application for Victims Assistance.

Opinion: It is both acceptable and entirely appropriate that the issue be dealt with through another MLA's office without the involvement of the parent. It was my opinion that such a course would be in keeping with both the letter and spirit of the Legislation.

Issue 10: A Parliamentary Secretary requested an opinion as he was being asked to deal with some issues involving an industry that he was personally involved in. He felt that he saw no personal benefit or conflict in the work he was being asked to undertake but realized that there was always the possibility that this could arise.

Opinion: After reviewing the matter I saw no likelihood of problems arising from involving this aspect of the appointment and believe that such issues are best dealt with by people with a thorough understanding of what they are talking about based on their own extensive experience. I apprised the Member about refraining from undertaking responsibilities involving money issues related to the industry. As well, the Member was reminded that with financial matters which might, conceivably, directly or indirectly be of personal benefit to him, he should ask for arrangements to be made for those particular responsibilities by another Member.

A Final Note

The 36th Parliament of the Province of British Columbia will come to an end prior to my next Annual Report to the Legislative Assembly, and I wish to take this opportunity of expressing my thanks to the Speaker and all Members of the Legislative Assembly for their support, encouragement and co-operation in the years in which I have had the privilege of being an Officer of the House, and a servant — and hopefully a useful servant — of the people of British Columbia.

APPENDIX A

MEMBERS' CONFLICT OF INTEREST ACT

CHAPTER 287

[Updated to September 6, 2000]

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Definitions

1 In this Act:

"child" includes a person to whom a member has demonstrated a settled intention to treat as a child of his or her family;

"commissioner" means the person appointed under section 14;

"member" means a member of the Legislative Assembly or of the Executive Council, or both;

"private corporation" means a "private issuer" as defined in the *Securities Act;*

"private interest" does not include an interest arising from the exercise of an official power or the performance of an official duty or function that

(a) applies to the general public,

(b) affects a member as one of a broad class of electors, or

(c) concerns the remuneration and benefits of a member or an officer or employee of the Legislative Assembly;

"spouse" means a person who is married to a member or a person who is living with a member as husband and wife but does not include a husband or a wife who is separated and living apart from a member and who

(a) has entered into a written agreement under which they have agreed to live apart, or

(b) is subject to an order of the court recognizing the separation.

Conflict of interest

2 (1) For the purposes of this Act, a member has a conflict of interest when the member exercises an official power or performs an official duty or function in the execution of his or her office and at the same time knows that in the performance of the duty or function or in the exercise of the power there is the opportunity to further his or her private interest.

(2) For the purposes of this Act, a member has an apparent conflict of interest if there is a reasonable perception, which a reasonably well informed person could properly have, that the member's ability to exercise an official power or perform an official duty or function must have been affected by his or her private interest.

Conflict of interest prohibition

3 A member must not exercise an official power or perform an official duty or function if the member has a conflict of interest or an apparent conflict of interest.

Insider information

4 A member must not use information that is gained in the execution of his or her office and is not available to the general public to further or seek to further the member's private interest.

Influence

5 A member must not use his or her office to seek to influence a decision, to be made by another person, to further the member's private interest.

Activities on behalf of constituents

6 This Act does not prohibit the activities in which members normally engage on behalf of constituents.

Accepting extra benefits

7 (1) A member must not accept a fee, gift or personal benefit, except compensation authorized by law, that is connected directly or indirectly with the performance of his or her duties of office.

(2) Subsection (1) does not apply to a gift or personal benefit that is received as an incident of the protocol or social obligations that normally accompany the responsibilities of office.

(3) If a gift or personal benefit referred to in subsection (2) exceeds $250 in value, or if the total value received directly or indirectly from one source in any 12 month period exceeds $250, the member must immediately file with the commissioner a disclosure statement, in the form prescribed by the regulations, indicating

(a) the nature of the gift or benefit,

(b) its source, and

(c) the circumstances under which it was given and accepted.

Former members of Executive Council and former parliamentary secretaries

8 (1) The Executive Council, a member of the Executive Council or an employee of a ministry other than an employee of an agency, board or commission, must not knowingly

(a) award or approve a contract with, or grant a benefit to, a former member of the Executive Council or former parliamentary secretary, until 24 months have expired after the date when the former member of the Executive Council or former parliamentary secretary ceased to hold office,

(b) award or approve a contract with, or grant a benefit to, a former member of the Executive Council or former parliamentary secretary who has, during the 24 months after the date when the former member of the Executive Council or former parliamentary secretary ceased to hold office, made representations in respect of the contract or benefit, or

(c) award or approve a contract with, or grant a benefit to, a person on whose behalf a former member of the Executive Council or former parliamentary secretary has, during the 24 months after the date when the former member of the Executive Council or former parliamentary secretary ceased to hold office, made representations in respect of the contract or benefit.

(2) Subsection (1) (a) and (b) does not apply to contracts or benefits in respect of further duties in the service of the government.

(3) Subsection (1) does not apply if the conditions on which the contract or benefit is awarded, approved or granted are the same for all persons similarly entitled.

(4) A former member of the Executive Council or former parliamentary secretary must not, unless 24 months have expired after the date when he or she ceased to hold office,

(a) accept a contract or benefit that is awarded, approved or granted by the Executive Council, a member of the Executive Council or an employee of a ministry other than an employee of an agency, board or commission,

(b) make representations on his or her own behalf with respect to such a contract or benefit, and

(c) make representations on another person's behalf with respect to such a contract or benefit.

(5) Subsection (4) (a) and (b) does not apply to contracts or benefits in respect of further duties in the service of the government.

(6) Subsection (4) does not apply if the conditions on which the contract or benefit is awarded, approved or granted are the same for all persons similarly entitled.

(7) A former member of the Executive Council or a former parliamentary secretary must not make representations to the government in relation to any specific ongoing transaction or negotiation to which the government is a party and in which the former member of the Executive Council or former parliamentary secretary was directly involved if the representation would result in the conferring of a benefit not for general application.

(8) A person who contravenes subsection (4) or (7) commits an offence and is liable, on conviction, to a fine of not more than $5 000.

Carrying on business

9 (1) A member of the Executive Council must not

(a) engage in employment or in the practice of a profession,

(b) carry on a business, or

(c) hold an office or directorship other than in a social club, religious organization or political party

if any of these activities are likely to conflict with the member's public duties.

(2) A person who becomes a member of the Executive Council must comply with subsection (1) within 60 days of being appointed.

(3) The commissioner may extend the period referred to in subsection (2) by giving the member a written notice to that effect, and may impose on the extension conditions that the commissioner considers just.

(4) If a member of the Executive Council complies with subsection (1) (b) by entrusting his or her business to one or more trustees,

(a) the provisions of the trust must be approved by the commissioner,

(b) the trustees must be persons who are at arm's length with the member and approved by the commissioner,

(c) the trustees must not consult with the member with respect to managing the trust property, and

(d) the trustees must report in writing all material changes in assets, liabilities and financial interests contained in the trust to the member and the commissioner immediately after the changes have occurred.

(5) For the purposes of this section, the management of routine personal financial interests does not constitute carrying on a business.

Procedure on conflict of interest

10 (1) A member who has reasonable grounds to believe that he or she has a conflict of interest in a matter that is before the Legislative Assembly or the Executive Council, or a committee of either of them, must, if present at a meeting considering the matter,

(a) disclose the general nature of the conflict of interest, and

(b) withdraw from the meeting without voting or participating in the consideration of the matter.

(2) If a member has complied with subsection (1), the Clerk of the Legislative Assembly or secretary of the meeting must record

(a) the disclosure,

(b) the general nature of the conflict of interest disclosed, and

(c) the withdrawal of the member from the meeting.

(3) The Clerk of the Legislative Assembly or secretary of the meeting must file the information recorded under subsection (2) with the commissioner,

(a) in the case of a meeting of the Legislative Assembly or a committee of the Legislative Assembly, as soon as practicable, and

(b) in the case of a meeting of the Executive Council or a committee of the Executive Council, as soon as practicable after the Executive Council's decision on the matter which has been the subject of the disclosure is made public.

(4) The commissioner must keep all information filed under subsection (3) in a central record kept for that purpose and must

(a) make the central record available for inspection by any person without charge during normal business hours, and

(b) on request by any person provide a copy of the record or portion of it on payment of a reasonable copying charge.

Performance of responsibilities by minister

11 (1) If, during the exercise of any official power or the performance of any official duty or function by a member of the Executive Council, a matter arises with respect to which the member has a conflict of interest or apparent conflict of interest, the member must

(a) refrain at all times from attempting to influence the matter, and

(b) at any subsequent meeting of the Executive Council or a committee of the Executive Council at which the matter is considered, disclose the general nature of the private interest and withdraw from the meeting without voting or participating in the discussion.

(2) The Lieutenant Governor in Council may appoint a member of the Executive Council to act in the place of a member referred to in subsection (1) for any matter

with respect to which the member referred to in subsection (1) has a conflict of interest or apparent conflict of interest.

Voidability of transaction or procedure

12 The failure of any member to comply with section 10 does not of itself invalidate

(a) any contract or other financial transaction, or

(b) any procedure undertaken by the government with respect to a contract or other financial transaction

to which the failure to comply with section 10 relates, but the transaction or procedure is voidable at the instance of the government before the expiration of 2 years from the date of the decision authorizing the transaction, except as against any person who or organization that acted in good faith and without actual notice of the failure to comply with section 10.

Application for restitution

13 Despite anything in this Act, if any person, whether or not the person is or was a member, has realized financial gain in any transaction to which a violation of this Act relates, any other person affected by the financial gain, including the government or a government agency, may apply to the Supreme Court for an order of restitution against the person who has realized the financial gain.

Commissioner

14 (1) There must be appointed a commissioner who is an officer of the Legislative Assembly.

(2) On the motion of the Premier in the Legislative Assembly and on the recommendation of 2/3 of the members present, the Lieutenant Governor in Council must appoint the person so recommended to the office of commissioner.

(3) The commissioner holds office for a term of 5 years and may be reappointed for a further term or terms.

(4) The commissioner may be removed or suspended before the end of the term of office by the Lieutenant Governor in Council for cause on the recommendation of the Legislative Assembly.

(5) The commissioner must be paid compensation as may be set by the Lieutenant Governor in Council.

(6) If

(a) the commissioner is removed or suspended or the office of the commissioner becomes vacant when the Legislature is sitting but no recommendation under this Act is made by the Legislative Assembly before the end of that session, or

(b) the commissioner is suspended or the office of the commissioner is or becomes vacant when the Legislature is not sitting,

the Lieutenant Governor in Council may appoint an acting commissioner.

(7) The appointment of an acting commissioner under this section terminates

(a) on the appointment of a new commissioner under subsection (2),

(b) at the end of the period of suspension of the commissioner, or

(c) immediately after the expiry of 20 sitting days after the day on which he or she was appointed,

whichever the case may be and whichever occurs first.

(8) The commissioner may employ or retain persons that the commissioner considers necessary and may

(a) specify their duties and responsibilities, and

(b) establish their remuneration and other terms and conditions of employment, or retainer.

(9) The *Labour Relations Code* and the *Public Service Labour Relations Act* do not apply to a person employed or retained under subsection (8).

(10) [Repealed 1999-44-85.]

Annual report

15 The commissioner must report annually on the affairs of his or her office to the Speaker of the Legislative Assembly who must cause the report to be laid before the Legislative Assembly.

Disclosure statement

16 (1) Every member must, within 60 days of being elected, and after that annually, file with the commissioner a confidential disclosure statement in the form prescribed by the regulations.

(2) The disclosure statement must contain

(a) a statement of the nature of the assets, liabilities and financial interests of the member, the member's spouse and minor children, and private corporations controlled by any of them, and

(b) any other information that is prescribed by the regulations to be contained in the disclosure statement.

(3) After filing a disclosure statement, the member, and the member's spouse if the spouse is available, must meet with the commissioner to ensure that adequate disclosure has been made and to obtain advice from the commissioner on the member's obligations under this Act, and the commissioner may recommend the manner by which the member will comply with those obligations.

(4) If any asset, liability or financial interest described in the disclosure statement relates to a corporation, the commissioner must ascertain whether any other corporation is an affiliate of the first named corporation, as determined under section 1 (2) to (6) of the *Company Act*.

(5) If the commissioner determines that there is an affiliate of the first named corporation, he or she must

(a) advise the member of the fact, in writing, and

(b) mention the fact in the public disclosure statement prepared under section 17.

(6) After filing a disclosure statement, the member must continue to disclose any material change in the assets, liabilities and financial interests of the member, the member's spouse and minor children and private corporations controlled by any of them by filing a statement of material change with the commissioner within 30 days of the material change.

(7) In subsection (6), **"material change"** means a material change as defined in the regulations.

Public disclosure statement

17 (1) After meeting with the member, and with the member's spouse if the spouse is available, the commissioner must prepare a public disclosure statement containing all relevant information provided by the member, and by the member's spouse if the spouse met with the commissioner, in respect of the member, the spouse and minor children, except

(a) the municipal address or legal description of land that is primarily for the residential or recreational use of the member or the member's spouse or minor children, and

(b) personal property used for transportation or for household, educational, recreational, social or aesthetic purposes.

(2) The public disclosure statement must contain a statement of any gifts or benefits that have been disclosed to the commissioner under section 7 (3).

(3) The commissioner must, as soon as is practicable, file the public disclosure statement with the Clerk of the Legislative Assembly who must

(a) make the statement available to any person for inspection without charge and during normal business hours, and

(b) provide a copy of the statement on payment of a reasonable copying charge.

Commissioner's opinions and recommendations

18 (1) A member may request, by application in writing, that the commissioner give an opinion or recommendation on any matter respecting the obligations of the member under this Act or under section 25 of the *Constitution Act*.

(2) The commissioner may make such inquiries as the commissioner considers appropriate and provide the member with a written opinion and recommendations.

(3) If the commissioner is of the opinion that a member has or may have a conflict of interest, the commissioner may, in the recommendations, specify the time by which the member must resolve the matter.

(4) The opinion and recommendations of the commissioner are confidential, but may be released by the member or with the consent of the member in writing.

(5) If the commissioner determines that a member has not contravened this Act, that determination is final for all purposes of the Act and any proceeding under the Act, so long as the facts presented by the member to the commissioner under subsection (1) were accurate and complete.

Commissioner's opinion on referred question

19 (1) A member who has reasonable and probable grounds to believe that another member is in contravention of this Act or of section 25 of the *Constitution Act* may, by application in writing setting out the grounds for the belief and the nature of the contravention alleged, request that the commissioner give an opinion respecting the compliance of the other member with the provisions of this Act.

(2) A member of the public who has reasonable and probable grounds to believe that there has been a contravention of this Act or of section 25 of the *Constitution Act* may, by application in writing setting out the grounds for the belief and the nature of the contravention alleged, request that the commissioner give an opinion respecting the alleged contravention.

(3) The Executive Council may request that the commissioner give an opinion on any matter respecting the compliance of a member of the Executive Council or a parliamentary secretary with the provisions of this Act or of section 25 of the *Constitution Act*.

(4) The Legislative Assembly may request that the commissioner give an opinion on any matter respecting the compliance of a member with the provisions of this Act or of section 25 of the *Constitution Act*.

Special assignments

20 At the request of the Lieutenant Governor in Council or the Legislative Assembly, the commissioner may undertake special assignments that he or she considers appropriate.

Inquiry

21 (1) On receiving a request under section 19, and on giving the member concerned reasonable notice, the commissioner may conduct an inquiry.

(2) If the request for an opinion is made under section 19 or the commissioner undertakes a special assignment under section 20, the commissioner has the powers of a commissioner under sections 15 and 16 of the *Inquiry Act*.

(3) If the request for an opinion is made under section 19 (1), the commissioner must report his or her opinion to the Speaker of the Legislative Assembly who must cause the report to be laid before the Legislative Assembly if it is in session or, if not in session, to the Clerk of the Legislative Assembly who must send a copy of it to all members of the Legislative Assembly.

(4) If it appears to the commissioner that the report may adversely affect the member, the commissioner must inform the member of the particulars and give the member the opportunity to make representations, either orally or in writing, at the discretion of the commissioner, before the commissioner finalizes the report.

(5) If the commissioner is of the opinion that the member making the application under section 19 (1) had no reasonable and probable grounds for making it, the commissioner may state that in his or her report, and if he or she does so, the commissioner must report the matter to the Speaker who must lay the report before the Legislative Assembly and the Legislative Assembly may, after considering the matter, hold the member in contempt of the Legislative Assembly.

(6) If the request for an opinion is made under section 19 (3), the commissioner must report his or her opinion to the Secretary of the Executive Council.

Penalties

22 (1) If the commissioner finds

(a) after an inquiry under section 21 that a member has contravened section 3, 4, 5, 7, 8, 9 or 10 (1), or

(b) that a member has refused to file a disclosure statement within the time provided by section 16 or that a member has failed to comply with a recommendation of the commissioner under section 16 (3) or 19,

the commissioner may recommend, in a report that is laid before the Legislative Assembly

(c) that the member be reprimanded,

(d) that the member be suspended for a period specified in the report,

(e) that the member be fined an amount not exceeding $5 000, or

(f) that the member's seat be declared vacant until an election is held in the member's electoral district.

(2) The Legislative Assembly must consider the commissioner's report and respond to it as subsection (3) provides

(a) within 30 days after it is laid before the Legislative Assembly, or

(b) within 30 days after the next session begins if the Legislative Assembly is not in session.

(3) The Legislative Assembly may order the imposition of the recommendation of the commissioner under subsection (1) or may reject the recommendation, but the Legislative Assembly must not further inquire into the contravention or impose a punishment other than the one recommended by the commissioner.

Protection of commissioner

23 No action of any kind lies against the commissioner for anything he or she does under this Act.

Appropriation

24 Money required for the operation of the office of the commissioner may be paid out of the consolidated revenue fund.

Offence Act

25 Section 5 of the *Offence Act* does not apply to this Act.

Power to make regulations

26 Subject to the approval of the Lieutenant Governor in Council, the commissioner may make regulations prescribing any matter that is contemplated in this Act to be prescribed by regulations.

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Amendments Not in Force

MEMBERS' CONFLICT OF INTEREST ACT

RSBC 1996, chapter 287

Section	*Citation*
9	*RS1996 (Supp) -287-1; 1992-64-5.*
Transitional	*RS1996 (Supp) -287-2; 1992-64-14.*

Legislative History

MEMBERS' CONFLICT OF INTEREST ACT

RSBC 1996, chapter 287

Section	History
1	1990-54-1; 1992-64-1.
2	1990-54-2; 1992-64-2.
3	1990-54-2.1; 1992-64-3.
4	1990-54-3.
5	1990-54-4.
6	1990-54-5.
7	1990-54-6.
8	1990-54-7; 1992-64-4.
9	1990-54-8.
10	1990-54-9; 1992-64-6.
11	1990-54-9.1; 1992-64-7.
12	1990-54-9.2; 1992-64-7.
13	1990-54-9.3; 1992-64-7.
14	1990-54-10; 1992-82-165.
15	1990-54-11.
16	1990-54-12; 1992-64-8.
17	1990-54-13.
18	1990-54-14; 1992-64-9.
19	1990-54-15; 1992-64-10.
20	1990-54-15.1; 1992-64-11.
21	1990-54-16; 1992-64-12.
22	1990-54-17; 1992-64-13.
23	1990-54-18.
24	1990-54-19.
25	1990-54-20.
26	1990-54-21.

EXPLANATORY NOTE

Amendments Not in Force: If there are any legislative changes to the Act that are not in force as of December 31, 1996, these are identified in *italics* at the beginning of the historical table. The "Section" column identifies the affected provisions of the Act. The "Citation" column identifies the amending legislation by its citation in the 1996 Statute Revision Supplement.

Legislative History: The second part of the table provides a legislative history of each section of the Act between the 1979 Statute Revision and the 1996 Statute Revision. The "Section" column identifies all sections of the Act in force on December 31, 1996. The "History" column for each section begins with the citation of the section immediately before the 1996 Statute Revision. This is followed by a list of citations for the legislation that enacted or amended the section between the 1979 Statute Revision and the 1996 Statute Revision (if a section was repealed and replaced during that period, these last citations begin at the most recent replacement).

Legislative citations have the format of "year-chapter-section".

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MEMBERS' CONFLICT OF INTEREST ACT

CHAPTER 287

1 ***Section 9 of the Members' Conflict of Interest Act is amended***

(a) by repealing subsections (1) and (2) and substituting the following:

(1) A member of the Executive Council or a parliamentary secretary must not

(a) engage in employment or in the practice of a profession, or

(b) carry on a business

if any of these activities is likely to conflict with the member's or parliamentary secretary's public duties.

(1.1) A member of the Executive Council or a parliamentary secretary must not hold an office or directorship other than in a social club, religious organization, political party or government corporation.

(2) A person who becomes a member of the Executive Council or a parliamentary secretary must comply with subsections (1) and (1.1) within 60 days of being appointed. ,

(b) in subsection (3) by adding "of the Executive Council or the parliamentary secretary" ***after*** "the member", ***and***

(c) by repealing subsection (4) and substituting the following:

(4) If a member of the Executive Council or a parliamentary secretary complies with subsection (1) (b) by entrusting his or her business to one or more trustees,

(a) the provisions of the trust must be approved by the commissioner,

(b) the trustees must be persons who are at arm's length with the member or with the parliamentary secretary and who are approved by the commissioner,

(c) the trustees must not consult with the member or the parliamentary secretary with respect to managing the trust property, and

(d) the trustees must report in writing all material changes in assets, liabilities and financial interests contained in the trust to the member or the parliamentary secretary and to the commissioner immediately after the changes have occurred.

1992-64-5.

Transitional for amendments in section 1

2 A person who is a member of the Executive Council or a parliamentary secretary on the date that section 1 of this Supplement comes into force must comply with section 9 (1) and (1.1) of the *Members' Conflict of Interest Act* within 60 days of that date.

1992-64-14.

Commencement

3 Sections 1 and 2 come into force by regulation of the Lieutenant Governor in Council.

1992-64-15.

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LIST OF CONSEQUENTIAL LEGISLATIVE AMENDMENTS

THIS LIST CONTAINS AMENDMENTS RELEVANT TO THE FOLLOWING LEGISLATION AT THE TIME OF PURCHASE: **MEMBERS' CONFLICT OF INTEREST ACT**

NOTE: THIS LIST IS PRINTED FOR ***CONVENIENCE ONLY*** AND HAS BEEN CONSOLIDATED AS OF: **AUGUST 27, 2001**

THIS LIST CONTAINS BILLS ENACTED: **AUGUST 27, 2001**

Amended by	Section	Amended Act and Amendments	Effective Date
S.B.C. 2001 CHAPTER 43 (BILL 23, 2001)		***8 Section 9 (4) (d) of the Members' Conflict of Interest Act, R.S.B.C. 1996, c. 287, is repealed and the following substituted:*** (d) within 60 days after the formation of the trust, and after that annually, the trustees must provide the commissioner with a confidential report, in a form acceptable to the commissioner, disclosing the assets, liabilities and financial interests contained in the trust. ***9 Section 16 is amended*** ***(a) in subsection (2) by striking out*** "The disclosure statement must contain" ***and substituting*** "Subject to subsection (2.1), the disclosure statement must contain", ***and*** ***(b) by adding the following subsection:*** (2.1) The disclosure statement of a member of the Executive Council who has complied with section 9 (1) (b) by entrusting his or her business to one or more trustees need not contain a statement of the nature of the assets, liabilities and financial interests contained in the trust. **Commencement** (5) Sections 8 and 9 are deemed to have come into force on June 5, 2001, and are retroactive to the extent necessary to give them effect on and after that date.	JUNE 5, 2001 INTO FORCE